

Topic 6: Technical Basis for Fish Consumption Rate / Wabanaki Study

EPA's Decision: In EPA's February 2015 disapproval decision, the Agency rejected the State's use of a 1992 study conducted by McLaren/Hart – ChemRisk of Portland, Maine, (ChemRisk Study) for purposes of setting WQS to protect the sustenance fishing designated use. The ChemRisk Study does not adequately represent tribal sustenance fish consumption because it was based on a statewide recreational angler survey, not on a survey of tribal sustenance fishers in tribal waters. Additionally, there were several fish consumption advisories in place at the time of the ChemRisk Study, thus suppressing the level of documented fish consumption. Maine Department of Environmental Protection acknowledged the existence of suppression in the ChemRisk Study in its response to comments on its 2012 WQS revisions.¹ See Topic 5 for a discussion regarding use of current unsuppressed fish consumption data.

EPA concluded that the Wabanaki Study used a sound methodology (peer reviewed, written by experts in risk assessment and anthropology), and contains the best currently available information for the purpose of deriving an FCR for HHC adequate to protect present day sustenance fishing for such waters. It is the only local study focused on the tribal members and areas most heavily used by those members today. While it relies on daily caloric and protein intake to derive heritage FCRs, the FCR of 286 g/day is also the best currently available estimate for contemporary tribal sustenance level fish consumption for waters where the sustenance fishing designated use applies.

In addition, EPA consulted with tribal governments to obtain their views on the suitability of the Wabanaki Study and any additional relevant information to select a FCR for this final rulemaking. The tribes represented that the Wabanaki study and corresponding rate of 286 g/day is an appropriate and accurate portrayal of their present day sustenance fishing lifeway, absent significant improvement in the availability of anadromous fish species, and EPA gave significant weight to the tribes' representations.²

Maine's Position:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

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EPA's Response:

Ex.5 AWP / DPP / ACP

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